

Conservation Resource Center's Tax Credit Exchange

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Tax Credit Update Topic: **HB 1244: The New Tax Credit Legislation**

On July 7, 2005, Governor Owens signed into law House Bill 1244. This new legislation is the result of a collective effort on behalf of the Colorado Coalition of Land Trust and the Colorado conservation community to clarify and improve upon the current Colorado Conservation Tax Credit Statute (C.R.S. §39-22-522). The new legislation has essentially four components, each of which is outlined below.

I. Timing of Credit Transfers

Until now, credit transfers had to occur by the end of the year in which the credit purchaser applied the credits to his or her Colorado State Income Taxes. The enactment of HB 1244 has moved the deadline by which to transfer credits to the original due date for filing state and federal income tax returns (without extensions). This date is generally April 15th, but for filing 2005 taxes, the due date is April 17, 2006.

It is important to note that the deadline by which to donate easements has not changed. That is, if an easement donor intends to donate an easement and would like to earn 2005 conservation tax credits, the donation must close by December 31, 2005. That easement donor, however, now has until the following April 17th to transfer the credits earned from the 2005 easement donation. The later deadline for transferring the credits will alleviate much of the last minute scrambling that inevitably occurred when the easement donations *and* the credit transfers all had to occur before the year's end.

Unfortunately, it is also important to note that the new transfer deadline will most likely result in the bulk of the transfers occurring just prior to the deadline. Transferors of credits should be aware that they will most likely not receive their proceeds from the sale of their credits until April.

II. Credits Survive Death of Easement Donor

Before HB 1244, there was some confusion and inconsistency in the Colorado Department of Revenue's position with respect to what happens to the credit if the holder of the credit dies. HB 1244 has clarified this and provides that credits held by an easement donor shall survive the death of the donor and may be claimed or transferred by the donor's estate. Credits held by a credit purchaser (transferee) may only be used by the transferee's estate for taxes owed by the estate should that transferee die prior to applying his or her credits.

III. Clarification of the Department of Revenue's Authority

Before HB 1244, there was a lack of clarity as to the scope of the Colorado Department of Revenue's authority with respect to challenging the validity of a tax credit. While under the original Colorado

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Conservation Tax Credit Statute the Department did have the authority to challenge the validity of the credit, the basis for that authority was implicit and therefore unclear to taxpayers.

HB 1244 gives the Department of Revenue the explicit authority to review the value of an appraisal and to accept or reject the value of the easement – or the value and/or validity of the credit – based on the findings of its review.

IV. Easement Donor Shall be the “Tax Matters Representative”

Before HB 1244, it was unclear as to whether the easement donor or the transferee of the credits would be the point of contact should the Department of Revenue decide to exercise its authority and question the validity of the credit. HB 1244 requires the donor of an easement for which that credit is claimed to be the “tax matters representative” in all matters with respect to the credit. This means that even if a conservation easement donor transferred his or her credits, that donor is responsible for representing and binding the transferees of the credit with respect to all issues affecting the credit. Consequently, resolution of disputes regarding the credit shall also be binding on the transferees.

HB 1244 will benefit both landowners and land trusts by making the conservation tax credit program here in Colorado more efficient and effective. It should also allow credit purchasers more time to assess their tax credit needs and complete the credit transfer. If you have any questions about HB 1244 or any other matter regarding Colorado conservation tax credits, please don't hesitate to contact us.